

LYNN C. JORDHEIM
Acting United States Attorney
by SHON HASTINGS, AUSA
Quentin N. Burdick U.S. Courthouse
655 First Ave. N. - Suite 250
Fargo, ND 58102-4932
(701) 297-7400
shon.hastings@usdoj.gov
Attorney for United States: Jackley,
USAO-SD, FBI, FBI employees
Oravec, and Weyand

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

EARLINE COLE, as an individual and as)
personal representative of the ESTATE OF)
STEVEN BEARCRANE, CLETUS COLE, as)
an individual and as personal representative of)
the ESTATE OF STEVEN BEARCRANE,)
PRECIOUS BEARCRANE, minor child,)
VERONICA SPRINGFIELD, as an individual)
and as personal representative of the ESTATE)
OF ROBERT SPRINGFIELD, and VELMA)
SPRINGFIELD, minor child,)

Plaintiffs,)

v.)

FEDERAL BUREAU OF INVESTIGATION,)
SALT LAKE CITY FIELD OFFICE, UNITED)
STATES ATTORNEYS OFFICE FOR)
SOUTH DAKOTA, MARTY J. JACKLEY, in)
his official capacity, ERNEST WEYAND, in)
his individual and official capacity, and)
MATTHEW ORAVEC, in his individual)
capacity,)

Defendants.)

CV-09-21-BLG-RFC-CSO

**UNITED STATES'
MOTION TO DISMISS
AMENDED COMPLAINT**

Pursuant to Rule 8 and 12 of the Federal Rules of Civil Procedure, the United States of America, by Lynn C. Jordheim, Acting United States Attorney for the District of North Dakota, and Shon Hastings, Assistant United States Attorney, acting on behalf of the Federal Bureau of Investigation (FBI); the United States Attorney's Office for South Dakota; United States Attorney Marty J. Jackley, in his official capacity; Special Agent Ernest Weyand, in his individual and official capacity; and Special Agent Matthew Oravec, in his individual capacity, move this Court for an Order dismissing the Amended Complaint. The grounds for this Motion are:

- (1) Plaintiffs do not have standing to assert a cause of action for failure to investigate or prosecute a third party;
- (2) Plaintiffs failed to allege facts or cite to law sufficient to state a claim for relief;
- (3) Ernest Weyand and Matthew Oravec, who were named in their individual capacities, are entitled to qualified immunity from suit;
- (4) Plaintiffs have not met their burden of providing a waiver of sovereign immunity or subject matter jurisdiction over the United States, its agencies or the employees who were sued in their official capacity.

This Motion is based on the Amended Complaint, documents referenced in or embraced by the Amended Complaint, materials that are part of the public record, and all of the files and proceedings in this case.

The undersigned contacted opposing counsel who advised that plaintiffs oppose this Motion.

THEREFORE, the United States respectfully requests this Court to grant its Motion and dismiss the Amended Complaint with prejudice.

Dated this 9th day of October, 2009.

LYNN C. JORDHEIM
Acting United States Attorney

/s/ Shon Hastings
By: _____
SHON HASTINGS
Assistant United States Attorney
Quentin N. Burdick United States Courthouse
655 First Avenue North - Suite 250
Fargo, ND 58102-4932
(701) 297-7400
N.D. Bar Board ID No. 05084
Attorney for the United States:
Jackley, USAO D/SD, FBI, and
FBI employees Oravec and Weyand

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on June 24th 2009, a copy of the foregoing document was served on the following persons by the following means:

<u>1,2,3</u>	CM/ECF
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_____	E-Mail

1. Clerk, United States District Court
2. Jean Bearcrane
Attorney for Plaintiffs
3. Patricia S. Bangert
Attorney for Plaintiffs
pbangertlaw@aol.com

/s/ Shon Hastings

SHON HASTINGS, AUSA
Attorney for the United States:
Jackley, Kohn, USAO D/SD, FBI,
and FBI employees Barnhart, Oravec and Weyand